



Periodic Review / Retain Regulation Agency Background Document

Agency name	Commonwealth Transportation Board (Virginia Department of Transportation)
Virginia Administrative Code (VAC) citation	24 VAC 30-340
Regulation title	Debarment or Suspension of Contractors
Document preparation date	May 2, 2007

This form is used when the agency has done a periodic review of a regulation and plans to retain the regulation without change. This information is required pursuant to Executive Orders 36 (2006) and 58 (1999).

Legal basis

Please identify the state and/or federal legal authority for the regulation, including (1) the most relevant law and/or regulation, and (2) promulgating entity, i.e., agency, board, or person.

This regulation is promulgated by the Commonwealth Transportation Board (CTB) for use by the Virginia Department of Transportation pursuant to § 2.2-4321 of the *Code of Virginia* with respect to contracts let for construction or maintenance, as well as those relating to procurement of goods and services. The statute authorizes agencies designated by the Governor to establish debarment procedures in writing. The general authority for promulgating regulations by the CTB is § 33.1-12(3) of the *Code of Virginia*, which authorizes the CTB to make rules and regulations for the protection of and covering traffic on and the use of systems of state highways and to add to, amend or repeal the same.

Alternatives

Please describe all viable alternatives for achieving the purpose of the existing regulation that have been considered as part of the periodic review process. Include an explanation of why such alternatives were rejected and why this regulation is the least burdensome alternative available for achieving the purpose of the regulation.

No alternatives to this regulation were considered. Since § 2.2-4321 of the *Code of Virginia* stipulates that prospective contractors may be debarred from contracting for particular types of supplies, services, insurance or construction, for specified periods of time, and that debarment procedures be established in writing, the clear intent of the General Assembly is that state agencies and institutions be permitted to

develop criteria governing the imposition of sanctions against contractors who fail to fulfill obligations under past or present contracts. It is both reasonable and appropriate for the CTB to hold contractors accountable for compliance with the terms of a contract, or sanctioning contractors for proof of involvement in bidding crimes is in the public interest. Failure to do so would constitute an abrogation of the public trust by contributing to waste of public resources, as well as implicit concurrence with illegal or unethical behavior.

Public comment

Please summarize all comments received during the public comment period following the publication of the Notice of Periodic Review, and provide the agency response. Please indicate if an informal advisory group was formed for purposes of assisting in the periodic review.

No public comment was received following publication of the Notice of Periodic Review; therefore, no informal advisory board was formed for the purposes of assisting in the periodic review and no agency response was required.

Effectiveness

Please indicate whether the regulation meets the criteria set out in Executive Order 36, e.g., is necessary for the protection of public health, safety, and welfare, and is clearly written and easily understandable.

This regulation is necessary to protect the public’s health, safety and welfare with the least possible cost and intrusiveness to the citizens of the Commonwealth. It establishes the policy and procedures of the Commonwealth Transportation Board, to be followed in determining whether and what sanctions, including enjoinder or debarment should apply to contractors or their affiliates as defined by the regulation, where such contractor has failed to fulfill its obligations under a past contract or in the performance of a current contract. The ability to determine whether to impose sanctions and what sanctions to impose allows the CTB and VDOT to ensure the quality of work performed by these contractors. By enabling the CTB and VDOT to issue sanctions for failure to perform obligations under past or present contracts, or for proof of involvement in bidding crimes, this regulation allows the CTB and VDOT to hold contractors accountable for delivering goods and services at a reasonable price. This ability is consistent with prudent stewardship of public funds. Therefore, the CTB and VDOT believe that the regulation helps fulfill this goal.

This regulation is clearly written and easily understandable. The regulation defines pertinent terms. It refers to the sanction process, including circumstances under which sanctions may be imposed, timetables for specified actions to occur, and the right to a hearing on the matter of sanctions. VDOT believes that the lack of public comment received concerning the regulation indicates general satisfaction with the format of the regulation and its clarity and ease of comprehension.

Result

Please state that the agency is recommending that the regulation should stay in effect without change.

The agency is recommending that the regulation be retained and remain in effect without change.

Family impact

Please provide an analysis of the regulation's impact on the institution of the family and family stability.

This regulation has no impact on the institution of the family or family stability.